

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

NINA SCHLAEGEL, a minor,
by and through her mother, Erika
Schlaegel, on behalf of herself and
all others similarly situated,

Plaintiffs,

vs.

Nebraska Beef, Ltd.,

Defendant.

Case No. 08CVC07-9676

Judge Eric Brown

**JURY DEMAND
ENDORSED HEREON**

ANSWER

Defendant Nebraska Beef, Ltd. ("Nebraska Beef" or "Defendant") files its Answer to Plaintiffs' Complaint and responds as follows:

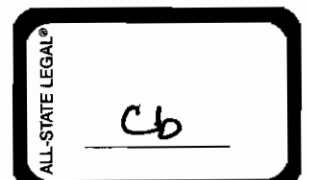
INTRODUCTION & NATURE OF ACTION

At this time, Nebraska Beef lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the paragraphs in this section of the Complaint and, therefore, those allegations are denied.

JURISDICTION & VENUE

1.

Nebraska Beef denies the allegations contained in paragraph 1 of the Complaint and denies that Plaintiffs meet the requirements to sustain a class action under Ohio R. Civ. P. 23.



2.

Nebraska Beef denies the allegations contained in paragraph 2 of the Complaint.

3.

Nebraska Beef denies the allegations contained in paragraph 3 of the Complaint.

4.

Nebraska Beef denies the allegations contained in paragraph 4 of the Complaint.

5.

Nebraska Beef denies the allegations contained in paragraph 5 of the Complaint.

PARTIES

6.

Nebraska Beef lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and, therefore, those allegations are denied.

7.

Nebraska Beef denies the allegations contained in paragraph 7 as stated. Nebraska Beef admits that it is a Nebraska limited partnership with its principal place of business at 4501 South 36th Street, Omaha, NE 68107.

FACTUAL BACKGROUND

8.

Nebraska Beef lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and, therefore, those allegations are denied.

9.

Nebraska Beef denies the allegations contained in paragraph 9 of the Complaint.

10.

Nebraska Beef denies the allegations as stated in paragraph 10 of the Complaint. Nebraska Beef admits it recalled 531,707 pounds of beef products. Nebraska Beef denies the remaining allegations contained in paragraph 10 of the Complaint.

11.

Nebraska Beef denies the allegations contained in paragraph 11 of the Complaint.

CLASS ALLEGATIONS

12.

There are no allegations against Nebraska Beef in paragraph 12 of the Complaint. To the extent that any allegations are intended, they are denied. Nebraska Beef denies that Plaintiffs meet the requirements to sustain class under Ohio R. Civ. P. 23.

13.

Nebraska Beef denies the allegations contained in paragraph 13 of the Complaint and denies that Plaintiffs meet the requirements to sustain a class under Ohio R. Civ. P. 23.

14.

Nebraska Beef denies the allegations contained in paragraph 14 of the Complaint and denies that Plaintiffs meet the requirements to sustain a class under Ohio R. Civ. P. 23.

15.

Nebraska Beef denies the allegations contained in paragraph 15 of the Complaint and denies that Plaintiffs meet the requirements to sustain a class under Ohio R. Civ. P. 23.

16.

Nebraska Beef denies the allegations contained in paragraph 16 of the Complaint and denies that Plaintiffs can meet the requirement to establish a class under Ohio R. Civ. P. 23.

17.

Nebraska Beef denies the allegations contained in paragraph 17 of the Complaint and denies that Plaintiffs can meet the requirement to establish a class under Ohio R. Civ. P. 23.

18.

Nebraska Beef denies the allegations contained in paragraph 18 of the Complaint and denies that Plaintiffs can meet the requirement to establish a class under Ohio R. Civ. P. 23.

19.

There are no allegations directed to Nebraska Beef in paragraph 19 of the Complaint. To the extent allegations are intended against Nebraska Beef, they are

denied. Nebraska Beef denies that Plaintiffs can establish the requirements to maintain a class under Ohio R. Civ. P. 23.

20.

There are no allegations directed to Nebraska Beef in paragraph 20 of the Complaint. To the extent allegations are intended against Nebraska Beef, they are denied. Nebraska Beef denies that Plaintiffs can establish the requirements to maintain a class under Ohio R. Civ. P. 23.

21.

Nebraska Beef lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and, therefore, those allegations are denied.

COUNT I

NEBRASKA BEEF IS NOT LIABLE UNDER OHIO PRODUCT LIABILITY LAW FOR ALLEGEDLY PRODUCING DEFECTIVE, CONTAMINATED MEAT

22.

Nebraska Beef incorporates by references the responses contained in paragraphs 1 through 21 as if set forth at length.

23.

Nebraska Beef denies the allegations contained in paragraph 23 of the Complaint.

24.

Nebraska Beef denies the allegations contained in paragraph 24 of the Complaint.

25.

Nebraska Beef denies the allegations contained in paragraph 25 of the Complaint.

26.

Nebraska Beef denies the allegations contained in paragraph 26 of the Complaint.

27.

Nebraska Beef denies the allegations contained in paragraph 27 of the Complaint.

28.

Nebraska Beef denies the allegations contained in paragraph 28 of the Complaint.

29.

Nebraska Beef denies the allegations contained in paragraph 29 of the Complaint.

30.

Nebraska Beef denies the allegations contained in paragraph 30 of the Complaint.

31.

Nebraska Beef denies the allegations contained in paragraph 31 of the Complaint.

COUNT II

**NEBRASKA BEEF IS NOT LIABLE FOR BREACHING ALLEGED
WARRANTIES ABOUT THE CHARACTER AND QUALITY OF THE
ALLEGEDLY CONTAMINATED MEAT**

32.

Nebraska Beef incorporates by references the responses contained in paragraphs 1 through 31 as if set forth at length.

33.

Nebraska Beef denies the allegations contained in paragraph 33 of the Complaint.

34.

Nebraska Beef denies the allegations contained in paragraph 34 of the Complaint.

COUNT III

**NEBRASKA BEEF IS NOT LIABLE FOR ALLEGEDLY FAILING
TO COMPLY WITH GENERALLY ACCEPTED STANDARDS OF
CARE REGARDING THE PROCESSING, HANDLING, STORAGE,
AND TRANSPORT OF MEAT PRODUCTS**

35.

Nebraska Beef incorporates by references the responses contained in paragraphs 1 through 34 as if set forth at length.

36.

Nebraska Beef denies the allegations contained in paragraph 36 of the Complaint.

37.

Nebraska Beef denies the allegations contained in paragraph 37 of the Complaint.

38.

Nebraska Beef denies all other allegations in the Complaint not specifically addressed above.

NEBRASKA BEEF'S DEFENSES

First Defense

39.

Plaintiffs' Complaint fails to state a claim upon which relief can be granted against Nebraska Beef.

Second Defense

40.

The damages, if any, sustained by Plaintiffs were or may have been caused or contributed by the direct and proximate negligence or fault of the Plaintiffs and/or by persons under the control of Plaintiffs and/or other parties, such as to reduce any recovery herein or alternatively, such as to reduce any recovery to which the Plaintiffs would otherwise be entitled by a proportion equal to the percentage that such negligence or fault represents to the total fault, if any, for the incidents alleged in the Complaint.

Third Defense

41.

The damages, if any, sustained by Plaintiffs were caused or contributed by the direct and proximate negligence or fault of parties or persons other than Nebraska Beef and accordingly, in the event Nebraska Beef is found to be liable to Plaintiffs, which liability is expressly denied, Nebraska Beef will be entitled to a finding of comparative negligence or fault and thereafter to indemnification, contribution, or apportionment pursuant to the applicable law.

Fourth Defense

42.

Plaintiffs have failed to join necessary and/or indispensable parties.

Fifth Defense

43.

Plaintiffs' alleged damages were or may have been caused by her assumption of the risk.

Sixth Defense

44.

Plaintiffs' claims are or may be barred by a failure to mitigate.

Seventh Defense

45.

Plaintiffs' alleged damages were the direct and proximate result of a substantial alteration of the alleged Nebraska Beef product after it left its control.

Eighth Defense

46.

Plaintiffs' alleged damages were the direct and proximate result of misuse of the alleged Nebraska Beef product.

Ninth Defense

47.

Plaintiffs' alleged damages were caused by an inherent characteristic of the alleged Nebraska Beef product, which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

Tenth Defense

48.

Nebraska Beef neither knew nor reasonably should have known that the alleged Nebraska Beef product presented a foreseeable risk of harm to Plaintiffs in the intended or foreseeable use of the product.

Eleventh Defense

49.

Plaintiffs' alleged damages were the direct and proximate result of an open and obvious risk and/or risk of the alleged Nebraska Beef product that is a matter of common knowledge.

Twelfth Defense

50.

Plaintiffs' claims are or may be subject to preemption under the Food, Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.* and Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*

Thirteenth Defense

51.

Nebraska Beef respectfully reserves the right to amend its Answer to add such additional defenses, cross-claims, and third party complaints as may be disclosed during the course of discovery in the captioned matter.

WHEREFORE, Nebraska Beef respectfully requests that the Complaint be dismissed, and that it be permitted to recover its costs of suit, and for such other and further relief as may be just and proper.


Respectfully submitted,
**WILES, BOYLE, BURKHOLDER
& BRINGARDNER CO., L.P.A.**



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JURY DEMAND

Defendant Nebraska Beef, Ltd. respectfully requests that the issues set forth herein be tried to the maximum number of jurors allowed by law.

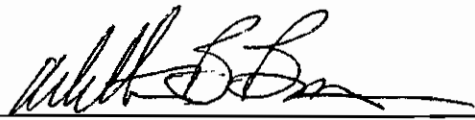

William B. Benson (#0047181)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Answer to Plaintiff's Complaint was sent, via e-mail and regular U.S. mail, postage prepaid, on this 25th day of September, 2008 to the following:

Mark Lewis, Esq.
Mark Kitrick, Esq.
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William B. Benson (#0047181)